

Members

Rep. John Day, Chairperson
Rep. Carolene Mays
Rep. Dan Stevenson
Rep. Randy Borrer
Rep. Jeff Espich
Rep. Eric Gutwein
Sen. Thomas Weatherwax, Vice-Chairperson
Sen. David Ford
Sen. Thomas Wyss
Sen. John Broden
Sen. Nancy Dembowski
Sen. Vi Simpson



INTERIM STUDY COMMITTEE ON CORPORATE TAXATION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

Diane Powers, Fiscal Analyst for the Committee
George Angelone, Attorney for the Committee

Authority: P.L. 81-2004

MEETING MINUTES¹

Meeting Date: August 3, 2004
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. John Day, Chairperson; Rep. Carolene Mays; Rep. Dan Stevenson; Rep. Jeff Espich; Rep. Eric Gutwein; Sen. David Ford; Sen. Thomas Wyss; Sen. Nancy Dembowski; Sen. Vi Simpson.

Members Absent: Rep. Randy Borrer; Sen. Thomas Weatherwax, Vice-Chairperson; Sen. John Broden.

Representative John Day, Chairperson of the Committee called the first meeting to order at 10:13 AM.

Representative Day asked each member of the committee to introduce themselves. After the introductions, Representative Day reviewed the charge of the committee set forth in Section 64 of P.L. 81-2004. (See Exhibit 1.)

Representative Day recognized Diane Powers and Dagney Faulk to present background information on the corporate income tax in Indiana. Ms. Powers provided an overview of work that the Indiana Legislative Services Agency (LSA) has done on business income taxes. (See Exhibits 3, 4, and 5.) Ms. Faulk presented information from the Fiscal Issue Brief entitled "The Corporate Income Tax in Indiana." (See Exhibit 3.)

Representative Day recognized Ken Miller, Commissioner of the Indiana Department of State Revenue (DOR), Tom Conley, Administrator of Tax Policy for the Indiana DOR, and Mike Ralston, Administrator of the Legal Division of the Indiana DOR.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Commissioner Miller began his presentation by providing a description of Passive Investment Companies (PICs). He explained that the DOR engages in a 3-year audit cycle to audit corporate income tax returns. He explained that for audits ending in June 2004, 112 multinational firms had been audited and approximately \$70 million in additional assessments had been billed to firms using PICs. Audits of an additional 79 corporations resulted in an additional \$50 million in assessments due to PICs.

Senator Simpson asked how often multistate and multinational corporations are audited. Commissioner Miller indicated that virtually all multinational corporations are audited during the 3 year audit cycle using both out-of-state audits and in-state audits.

Representative Espich asked why a change in the law is necessary if the DOR is already assigning additional assessments for disallowing deductions for PIC expenses.

Tom Conley indicated that the law needs to be clarified so that taxpayers know what expenses are deductible in Indiana.

Representative Espich indicated that he would like to see some examples of companies that use PICs, what sort of income they shelter and the amount of money that is involved, so that the committee will know what types of corporations would be affected by PIC legislation.

Senator Simpson asked if there are legitimate reasons why a company would form a PIC.

Tom Conley indicated that there are legitimate reasons to allow the use of a PIC and that the legislation that was offered during the 2004 session (HB 1365-2004) allowing companies with legitimate reasons to use a PIC.

Representative Espich stated that the legislation should not put small Indiana companies at a competitive disadvantage.

Commissioner Miller indicated that the point is to make sure that Indiana-sourced income is taxed in Indiana and that businesses pay their fair share of taxes.

Commissioner Miller then described combined reporting, which is an income tax reporting method that includes information on all members of a unitary group. Tom Conley indicated that combined reporting would eliminate many of the issues associated with PICs.

Senator Simpson asked what sort of information combined reporting includes. Tom Conley indicated that all operations of a company both in Indiana and elsewhere are included in combined income tax reporting.

Senator Simpson asked if inter-company transactions would be reported under this method. Tom Conley indicated that was correct.

Representative Espich asked about the fiscal impact of PIC legislation.

Tom Conley indicated that the legislation would result in approximately \$30 to \$40 million per year in additional income tax revenue.

Senator Simpson made the point that Ohio has had PIC legislation since the early 1990s [from Exhibit 6] and asked if Ohio has experienced any downside from this legislation, such as a loss of jobs or companies.

Representative Day passed out a map from the Council on State Taxation of states that have

implemented "anti-PIC" legislation [Exhibit 7].

Commissioner Miller then provided information on the definition of business income.

Representative Day recognized Shaw Friedman, an attorney from LaPorte, IN, to present information on the Multistate Tax Commission.

Before Mr. Friedman's presentation Commissioner Miller indicated that Indiana had been a member of the Multistate Tax Commission in the 1970s but that the General Assembly did not approve funding in 1975. Indiana has not been a member since then.

Mr. Friedman indicated that Indiana is one of five states that are not members of the Multistate Tax Commission. He provided information on the decrease in corporate tax revenues and the use of corporate tax shelters, including a widely cited report issued by the Multistate Tax Commission. (See Exhibits 8, 9,10.) Mr. Friedman has spoken with the Executive Director and Assistant Director of the Multistate Tax Commission and they are willing to meet with the committee.

After committee discussion, the second committee meeting was set for August 24 at 10AM.

Representative Day adjourned the meeting at 11:54 AM.